UNITED STATES DEPARTMENT OF LABOR
BOARD OF ALIEN LABOR CERTIFICATION APPEALS
800 K STREET, N.W., SUITE 400-N
WASHINGTON, D.C. 20001-8002

Date: December 1, 1997

Case No.: 96-INA-384

In the Matter of:

PUGLISES REALTY,
Employer,

On Behalf of:

DAN D. YANCES,
Alien.

Appearances: Luis Kovac-Vazquez,
for Employer

BEFORE: Burke, Guill, Vittone
Administrative Law Judges

DECISION AND ORDER

Per Curiam: This case arose from an application for labor certification on behalf of Dan D. Yances ("Alien") filed by Puglises Realty ("Employer") pursuant to Section 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(a)(5)(A) (the "Act") and the regulations promulgated thereunder, 20 C.F.R. Part 656. The Certifying Officer ("CO") of the U.S. Department of Labor, San Francisco, California, denied the application and the Employer requested review pursuant to 20 C.F.R. § 656.26.

The following decision is based on the record upon which the CO denied certification and Employer's request for review, as contained in an Appeal File ("AF"), and any written argument of the parties. 20 C.F.R. § 656.27(c).

STATEMENT OF THE CASE

Pursuant to Employer's application for labor certification for the position of Translator, the CO issued a Notice of Finding ("NOF") on October 25, 1995, proposing to deny said application (AF 26-32). The CO found that the job opportunity contains a foreign language requirement in violation of 20 C.F.R. §656.21(b)(2)(i)(C); that the job opportunity involves a combination of duties; i.e., translator and sales agent, real estate, in violation of 20 C.F.R.

§656.21(b)(2)(ii); and that the job opportunity, as described, does not indicate full-time employment in violation of 20 C.F.R. §656.3. The NOF informed Employer that it could rebut its findings by establishing business necessity for the foreign language requirement and the combination of duties, or, it could delete the foreign language requirement and one of the duties and readvertise. The NOF listed several pieces of documentation that Employer would need to produce in order to establish business necessity, and it informed Employer that unless it established business necessity, it would have to provide lawful job-related reasons for rejecting the U.S. applicants that applied for the position during the first recruitment. Instructions were also provided in regard to corrective action required with respect to the part-time employment issue.

By cover letter dated November 25, 1995, Employer submitted its rebuttal (AF 15-18). Employer's rebuttal consists of a one paragraph statement by owner manager, Aida Pugliese, and an equally short statement by employee/agent, Ivar Plasencia. Aida Pugliese stated:

> I believe that I am not violating [the regulations]. I am requiring the translator to provide simultaneous translations between agents & foreign investors as French, German, Italian & Spanish which is beneficial for the successful performance of the real estate business in the USA a business necessity as you can see through the enclosed document by Ivar Plasencia, my Real Estate Agent.

(AF 18). Ivar Plasencia's stated:

> This letter is to confirm the requirement to perform translations to English from: French German Italian and Spanish which is beneficial for the successful performance of the real estate business in the U.S.A. The lack of this (sic) foreign languages can not be performed by an English speaking person with real estate experience only. Our company would greatly benefit from an employee who is fluent in this (sic) 4 languages rather than hiring 4 different people to do this job. It makes good business sense.

(AF 17).

The CO issued a Final Determination on December 5, 1995, denying labor certification (AF 12-14). The CO noted that Employer's rebuttal was comprised of "self-serving statement[s] without documented evidence to support business necessity for the various issues" raised in the NOF (AF 14).

Thereafter, by cover letter dated January 3, 1996, Employer submitted an additional statement from a different agent/employee and another statement from the owner manager (AF 5-8). The CO treated this submission as a request for reconsideration which he denied on February 5, 1996 (AF 4). Employer thereafter requested administrative-judicial review (AF 1-2).

Employer's request stated: "I would like to have the above application forward (sic) to the Board of Alien Labor Certification Appeals for review." The case was referred to this Office and a Notice of Docketing issued on July 9, 1996, providing an opportunity for Employer to file a brief or statement of position within twenty-one days of the date of said Notice. To date, the Board has received no such brief or statement of position.

DISCUSSION

Employer's request for review does not state why the CO erred in regard to its finding that Employer did not successfully rebut the unduly restrictive requirement by establishing business necessity. The Board dismisses cases where the request for review fails to set forth specific grounds for review and no brief is filed. *See* ***Bixby/Jalama Ranch***, 88-INA-449 (Mar. 15, 1990); ***North American Printing Ink. Co.***, 88-INA-42 (Mar. 31, 1988) (*en banc*); ***Marine Fabrication***, 95-INA-244 (June 7, 1995) (Board dismissed where request for review merely stated that the CO's denial was an abusive discretionary decision and not based on fact or legal precedent). Because Employer has not identified any error, the CO's denial of alien labor certification is hereby **AFFIRMED**.

Assuming, *arguendo*, Employer had stated grounds for review, we would still affirm the CO because Employer failed to rebut the NOF. Employer's business necessity arguments in support of the foreign languages requirements are bare assertions that are unsupported by evidence or reason, and are insufficient to carry Employer's burden of proof. *See* ***Gencorp***, 87-INA-659 (Jan. 13, 1988) (*en banc*). Further, Employer did not address the combination of duties issue or the full-time employment issue, as raised as defects in the NOF. Accordingly, the following Order shall issue.

ORDER

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

SO ORDERED.

Entered at the direction of the Board:

TODD R. SMYTH
Secretary to the Board of
Alien Labor Certification Appeals

TRS/jlh

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will

become the final decision of the Secretary of Labor unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five, double-spaced, typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition and shall not exceed five, double-spaced, typewritten pages. Upon the granting of the petition the Board may order briefs.